

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YORKSHIRE TOWERS COMPANY L.P., *et*
ano.

Plaintiffs,

- against -

UNITED STATES DEPARTMENT OF
TRANSPORTATION, *et al.*,

Defendants.

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**DECLARATION OF
PHILIP E. KARMEL
IN SUPPORT OF
MTA DEFENDANTS'
MOTION TO DISMISS**

PHILIP E. KARMEL affirms and declares under penalty of perjury:

1. I am a member of Bryan Cave LLP, attorneys for the MTA Defendants¹ in this action, and respectfully submit this declaration in support of their motion to dismiss.

2. Annexed hereto as Exhibit A is a true and correct copy of Notice of Limitation on Claims Against Proposed Public Transportation Projects, 74 Fed. Reg. 65,203 (Dec. 9, 2009).

3. Annexed hereto as Exhibit B is a true and correct copy of the Finding of No Significant Impact ("FONSI") – including Attachment A, "Summary of Comments and Responses on Supplemental Environmental Assessment to the Second Avenue Subway Final Environmental Impact Statement: 72nd and 86th Street Entrance Alternatives, May 2009" – issued by the Federal Transit Administration on October 29, 2009. This FONSI is referenced in

¹ The MTA Defendants are Metropolitan Transportation Authority ("MTA"), Jay H. Walder in his capacity as its Chairman, New York City Transit Authority, Thomas F. Prendergast in his capacity as its President, MTA Capital Construction Company and Michael Horodniceanu in his capacity as its President.

paragraphs 3, 12, 24, 25, 27, 32, 117, 123, 124, 128, 130, 148-150, 154, 156, 158, 166, 169, 170, 172, 177, 201, 204, 206, 207, 210, 212, 216, 228, 241-243, 245 and 246 of the Complaint.

4. Annexed hereto as Exhibit C is a true and correct copy of the Supplemental Environmental Assessment dated May 2009 that is referenced in paragraphs 3, 12, 20, 23-25, 27, 32, 117, 119-121, 123-130, 139, 140, 143-146, 148-150, 154, 156, 158, 163, 166, 169, 170, 172, 177-179, 181, 183, 185, 187, 189, 193-195, 198, 200-202, 204, 210, 211, 213, 215, 216, 222, 228-230, 239-243, 245 and 246 of the Complaint.

WHEREFORE, for the reasons set forth in the MTA Defendants' Memorandum of Law submitted herewith, the MTA Defendants respectfully request that the Court grant their motion to dismiss and such other and further relief as the Court may deem just and equitable.

I declare under penalty of perjury that the foregoing is true and correct.


PHILIP E. KARMEL

Executed at New York, New York
on September 1, 2011